IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WA.No. 2285 of 2004()

AGAINST THE JUDGEMENT/ORDER IN OP.7507/1999 Dated 12/08/2004
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APPELLANT: RESPONDENTS IN THE O.P:
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1. **THE SECRETARY,**
   DEFENCE DEPARTMENT, GOVERNMENT OF INDIA, NEW DELHI

2. **THE CHIEF OF ARMY STAFF,**
   ARMY HEAD QUARTERS, NEW DELHI.

3. **LT.COL. OFFICIATING DIRECTOR PERSONNEL**
   FOR SIGNAL OFFICER-IN-CHIEF, DIRECTOR GENERAL OF SIGNALS, GENERAL STAFF BRANCH,ARMY HEAD QUARTERS, D.H.Q. P.O., NEW DELHI-110 011.

BY ADV. SRI.K.R.RAJKUMAR, ADDL.CGSC
SRI. AJITH KRISHNAN, ADDL.CGSC

RESPONDENTS: PETITIONER IN THE O.P:

K.BABURAJ, AGED 41 YEARS,
S/O. KARUVAN, KOLLANGODA HOUSE, KUMARANELLUR P.O. CALICUT DIST.

BY ADV. SRI.P.V.MOHANAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON 04/12/2007 DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & T.R.RAMACHANDRAN NAIR, JJ.

W.A.No.2285 OF 2004

Dated this the 4th day of December, 2007

JUDGMENT

Radhakrishnan, J.

This appeal is preferred by the Secretary of Defence Department and others against the direction of the learned Single Judge to provide alternate employment to the respondent so as to enable the respondent to continue atleast till the normal age of retirement in the civil side. Respondent was enrolled in Indian Army on 09/08/1977 and was ranked as RECT. He had completed the technical training and was attested on 18/09/1978 under the Army Act. He was posted to SIGNN TO 313 signal regiment. The enrollment of the respondent in the Indian Army and the attestation thereon was after civil verification and his previous antecedents. After attestation petitioner was working in the Indian Army without any complaint. However surprisingly respondent was served with an order dated 01/06/1979 informing that his service is no longer required. The order was challenged by the respondent before the authorities and before this court. It is unnecessary to refer to various writ petitions filed by the

respondent. We need only refer to the judgment of this court in O.P.No.15384/93 which was disposed of by this court on 13/03/1998. Learned Single Judge quashed the order passed by the Indian Army and further directed the Government of India to consider the revision filed by the petitioner therein and pass fresh orders. It was also ordered that while disposing of the revision, the Government of India must take into consideration the ruling of the Supreme Court reported in **State of M.P. v. Ramashanker Raghuvanshi** (AIR 1983 SC 374). and the order in Special Leave Appeal 8642/1995 dated 26/08/1986 confirming the judgment of the Bombay High Court in W.P. No.1462/1980 and W.A. No.174/1985. Ext.P9 is the order passed by the Government of India. The relevant portion of the said order is extracted hereunder:

" Considering the judicial pronouncements on the constitutional validity of the instructions regarding additional verification of character and antecedents of candidates hailing from certain stages, the Govt. of India, Ministry of Personnel, Public Grievances and Pension, Dept. of Personnel and Trg. vide their letter No.18011/1/(s)/86-Estt. dated 14th September 86, had already withdrawn these instructions". "The fact remains that

consequent to such policy, which has been held to be unconstitutional, certain adverse remarks about his character and antecedent were received. In other words, this policy requiring additional verification may be bad in law but this by itself would not cause any dent on the factual finding about his character and antecedents. This appears to be the precise reason that he was discharged from the services, on the ground of ' service no longer required'".

We have perused Ext.P9 order. No reason whatsoever has been stated for terminating the service of the respondent from Army. Since there was reference to adverse remarks, this court directed the authorities to make available the records. Learned Additional Central Government Standing counsel submitted before the learned Single Judge that the earliest record was the letter dated 21/08/1978 in which it was stated that the petitioner was considered unfit for retention in the Army and nothing else was stated. Further noticed that the discharge was on the ground of being an undesirable personnel. Neither in the counter affidavit nor in the impugned order or files nothing was stated that petitioner was involved in anti national activities. We are therefore of the view that the learned Single Jude was justified in

giving the direction to the army authorities atleast to provide suitable alternate employment in civil side. We find no error in the direction of the learned Single Judge. Therefore, the appeal lacks merit and it is dismissed.

K.S.RADHAKRISHNAN
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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